International Typographical Union *and* Register Publishing Co., Inc.

New Haven Typographical Union No. 47, International Typographical Union *and* Register Publishing Co., Inc.

International Typographical Union and Local 47 *and* John Vincenti *and* Ronald King. Cases 39-CB-5 (formerly 1-CB-4382), 39-CB-6 (formerly 1-CB-4383), 39-CB-7 (formerly 1-CB-4638), and 39-CB-12

25 June 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

On 13 August 1980 Administrative Law Judge Michael O. Miller issued the attached decision. The Respondents and the General Counsel filed exceptions and supporting briefs; the Charging Party Employer filed cross-exceptions, a supporting brief, and an answering brief to the Respondents' exceptions and the Respondents filed a brief in answer to the Charging Party Employer's cross-exceptions and in reply to the Charging Party Employer's answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,[1] findings,[2] and conclusions except as modified below and to adopt the recommended Order as modified.

The operative facts are fully set forth in the judge's decision. In relevant part, the record reveals that, at all times material herein, Respondent International Typographical Union, hereinafter referred to as Respondent International, has maintained the following restriction on resignation in article XIV, section 6, of its bylaws:

> No member may resign except upon written application, stating the reasons therefor, addressed to the local union of which he or she is a member, *and with the consent of the local union*. Any action of the local union upon such application may be appealed to the Executive Council as herein provided. [Emphasis added.]

As the judge correctly observed, the Board has repeatedly found that the quoted language is "invalid on its face" and unenforceable. *Hendricks-Miller Typographic Co.*, 240 NLRB 1082 (1979). Accord: *Typographical Union Local 101 (Photo-Typography)*, 243 NLRB 675 (1979); *Typographical Union Local 650 (Daily Breeze)*, 221 NLRB 1048 (1975).

Recently in *Engineers of Scientists Guild (Lockheed-California Co.)*, 268 NLRB 311 (1983), the Board found that the mere maintenance of such a provision restrains and coerces employees, who may be unaware of the provision's unenforceability, from exercising their Section 7 rights. Therefore in agreement with the judge, we shall order Respondent International to expunge this provision from its bylaws.

The judge further found, and we agree, that Respondent New Haven Typographical Union No. 47, International Typographical Union, Respondent Local or the Union, violated Section 8(b)(1)(A) and (B) of the Act by instituting, or threatening to institute, intraunion charges against employee Clifford Scherb and Supervisors Ronald King, James McNulty, and John Vincenti. Contrary to the judge, however, we also find that Respondent Local violated Section 8(b)(1)(A) and (B) by refusing to accept or give effect to the proffered resignations of those named individuals. The judge noted that outstanding Board precedents hold that, where a union's bylaws contain an invalid restriction on resignation, a union violates Section 8(b)(1) by refusing to acknowledge the effectiveness of its members' resignations. See *Machinists Lodge 727 (Lockheed-California Co.)*, 250 NLRB 303 (1980); *Distillery Workers Local 80 (Capitol-Husting Co.)*, 235 NLRB 1264 (1978). See also *Electrical Workers IBEW Local 66 (Houston Lighting Co.)*, 262 NLRB 483 (1982). Noting that a seemingly contrary result was reached in *Graphic Arts Local 32B (Banta Division)*, 250 NLRB 850 (1980), the judge concluded that *Banta* had overruled the previous authorities sub silentio.[3] Accordingly, the judge recommended dismissing that section of the complaint which alleges that Respondent Local's refusal to acknowledge the named individuals' resignations violated Section 8(b)(1)(A) and (B). We do not agree.

We have reexamined *Banta* and we do not agree with its holding in this regard. Therefore *Banta* is overruled to the extent it is inconsistent with *Houston Lighting* and *Capitol-Husting*. Accordingly we

[1] The Charging Party Employer has excepted to the judge's denial of its Motion for Summary Judgment, and has renewed its motion in its cross-exceptions. We find that the judge's ruling is free from error. Accordingly it is affirmed. The Charging Party Employer's renewed Motion for Summary Judgment is hereby denied as lacking in merit.

[2] Charging Party Employer has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] *Houston Lighting*, above, had not issued as of the date of the judge's decision.

find that by refusing to recognize and give effect to the effective resignation of employee Scherb, Respondent Local violated Section 8(b)(1)(A) of the Act. Similarly, we find that by refusing to recognize and give effect to the effective resignations of Supervisors King, McNulty, and Vincenti, Respondent Local violated Section 8(b)(1)(B) of the Act.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that

A. Respondent International Typographical Union its officers, agents, and representatives, shall take the action set forth in the Order.

B. Respondent New Haven Typographical Union No. 47, International Typographical Union, New Haven, Connecticut, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Restraining or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act by summoning former members to appear before the Local Union to face charges of violating the constitution and bylaws of the International Typographical Union in regard to conduct occurring after their valid resignations from membership.

(b) Restraining or coercing Register Publishing Co., Inc., in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances by summoning supervisors to appear before the Local Union to answer charges of violating the constitution and bylaws of the International Typographical Union in regard to conduct occurring after their effective resignations from membership.

(c) Rejecting or refusing to acknowledge the effectiveness of its members' valid resignations from membership.

(d) Enforcing or giving effect to article XIV, section 6, of the International Typographical Union "Book of Laws," or to any bylaw which prohibits, without express standards, resignation from union membership without the approval of the Local Union.

(e) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act or restraining or coercing Register Publishing Co., Inc., in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act.

(a) Vacate, rescind, and expunge from all its records all union charges issued against Clifford Scherb, James McNulty, John Vincenti, and Ronald King for conduct occurring after the date of their effective resignations from the Union.

(b) Post at its business office and meeting halls copies of the attached notice marked "Appendix B."[4] Copies of the notice, on forms provided by the Officer-in-Charge for Subregion 39, after being signed by Respondent Local's authorized representative, shall be posted by Respondent Local immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent Local to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Mail to the Officer-in-Charge for Subregion 39 signed copies of the notice for posting by Register Publishing Co., Inc., if the Employer is willing, in places where notices to employees are customarily posted. Copies of the notice, to be furnished by the Officer-in-Charge, after being signed by Respondent Local's authorized representative, shall be returned forthwith to the Officer-in-Charge.

(d) Notify the Officer-in-Charge for Subregion 39 in writing within 20 days from the date of this Order what steps Respondent Local has taken to comply.

[4] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX A

NOTICE TO EMPLOYEES AND MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL not institute, maintain, publish, or enforce any bylaw which prohibits, without express standards, resignation from union membership without consent of the Local Union.

WE WILL rescind and expunge article XIV, section 6, of our bylaws as published in our "Book of Laws."

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

INTERNATIONAL TYPOGRAPHICAL UNION

APPENDIX B

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT restrain or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act by summoning former members to appear before the Local Union to face charges of violating the constitution and bylaws of the International Typographical Union in regard to conduct which occurred after their valid resignations from membership.

WE WILL NOT restrain or coerce Register Publishing Co., Inc., in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances by summoning supervisors to appear before the Local Union to face charges of violating the constitution and bylaws of the International Typographical Union in regard to conduct which occurred after their effective resignations from membership.

WE WILL NOT reject or refuse to acknowledge the effectiveness of our members' valid resignations from membership.

WE WILL NOT enforce or give effect to article XIV, section 6, of the International Typographical Union "Book of Laws," or to any bylaw which prohibits, without express standards, resignation from union membership without the approval of the Local Union.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act or restrain or coerce Register Publishing Co., Inc., in the selection of representatives for the purpose of collective bargaining or the adjustment of grievances.

WE WILL vacate, rescind, and expunge from all our records all union charges issued against Ronald King, John Vincenti, James McNulty, and Clifford Scherb which relate to conduct of such former members occurring after the date of their effective resignations.

NEW HAVEN TYPOGRAPHICAL UNION NO. 47, INTERNATIONAL TYPOGRAPHICAL UNION

DECISION

STATEMENT OF THE CASE

MICHAEL O. MILLER, Administrative Law Judge. These cases were heard in New Haven, Connecticut, on March 26, 1980, based on unfair labor practice charges filed on various dates between January 4 and December 5, 1979, by the Register Publishing Co., Inc., the Employer, and John Vincenti and Ronald King, individuals, a complaint issued by the Acting Regional Director for Region 1 of the National Labor Relations Board, the Board, and an amended complaint issued by the Officer-in-Charge of Subregion 39 of the Board. The complaint and amended complaint allege that the International Typographical Union and the New Haven Typographical Union No. 47, International Typographical Union, individually called the International and the Local and collectively called Respondents, violated Section 8(b)(1)(A) and (B) of the National Labor Relations Act, the Act, by the International's continued maintenance of bylaw provisions unduly restricting the rights of its members to resign from union membership and by the Local's refusal to accept resignations, and its threats to institute internal union charges against employees and supervisors who had resigned. Respondent's answers deny the commission of any unfair labor practices.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to argue orally. Briefs, which have been carefully considered, were filed on behalf of the General Counsel, Respondents, and the Charging Parties.

On the entire record, including my careful observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. THE EMPLOYER'S BUSINESS AND THE RESPONDENTS' LABOR ORGANIZATION STATUS—PRELIMINARY CONCLUSIONS OF LAW

The Employer is a Connecticut corporation with its principal office and place of business located in New Haven, Connecticut, where it is engaged in the publication, circulation, and distribution of a daily newspaper, the New Haven Register. Jurisdiction is not an issue. The complaints allege and Respondents admit jurisdictional facts establishing that the Employer satisfied the Board's standards for the assertion of jurisdiction over such employers. I therefore find and conclude that the Employer is now, and has been at all times material herein, an employer engaged in commerce, within the meaning of Section 2(2), (6), and (7) of the Act.

The complaints allege, the Respondents admit, and I find and conclude that both the International and the Local have been at all times material herein labor organizations within the meaning of Section 2(5) of the Act.

II. MOTIONS

Respondents filed a timely answer to the original complaint, which had issued on November 14, 1979. Thereafter, based on a charge filed by Ronald King on Decem-

ber 5, 1979 in Case 39–CB–12, an amended consolidated complaint issued on February 29, 1980. That complaint was substantially identical to the original complaint except for the inclusion of King's name with those of Vincenti, McNulty, and Scherb, the individuals effected by Respondents' allegedly unlawful conduct. Respondents did not file a timely answer to this amended complaint; neither did it request an extension of time within which to file. On March 24, 1980, after the Charging Parties' counsel had moved for summary judgment against Respondents for their failure to file a timely answer, Respondents moved for leave to file an answer to "amended consolidated complaint out of time" to which it attached its answer. Its answer to the amended consolidated complaint reiterates all of the positions which it had taken in regard to the original complaint and denies all of the allegations as they pertained to King and the other individuals.

At hearing, the Charging Parties' counsel renewed its Motion for Summary Judgment. That motion was denied and was done again renewed in brief. Noting that Respondents had timely answered the original complaint, the allegations of which were virtually identical to the allegations of the amended complaint, that their ultimately filed answer to the amended complaint did not alter their positions in regard to the allegations of the complaint, and finally noting that their answer to the amended complaint was filed almost immediately after their failure to timely file was brought to their attention, I adhere to my original ruling.

The cases cited by Respondent in support of its renewed motion do not require any contrary conclusion. Thus, in *SDS Distributing Corp.*, 245 NLRB 322 (1978), the employer was advised by the General Counsel of its failure to answer a complaint which had issued over 2 months earlier. It *expressly* refused to file an answer and, following this chain of events, the General Counsel's Motion of Summary Judgment was granted. The Board, in that and other cases,[1] implicitly approved the procedure whereby, prior to the filing of a Motion for Summary Judgment, a respondent who has failed to file a timely answer is advised of the consequences of that failure and is given an opportunity to rectify its mistake *without prejudice*. Respondent also relied on *Liquid Carbonic Corp.*, 116 NLRB 795 (1956). That case held, in essence, that it was within the administrative law judge's discretion to grant or deny a Motion for Summary Judgment based on the untimely filing of an answer. Therein, the administrative law judge (then called trial examiner) held that he was without authority to grant such a motion, heard the case, and issued findings of fact and conclusions of law based on a full record. The Board, while holding that the trial examiner had erred in concluding that he was without authority to grant the Motion for Summary Judgment, affirmed with modifications his findings and conclusions, based on the entire record.

At hearing, Respondents moved for the admission of the Regional Director's initial dismissal of the charges herein as they pertained to these and other employees and for the admission of the General Counsel's directive partially sustaining and partially reversing that dismissal. The General Counsel and counsel for the Charging Parties objected on the basis of materiality and relevance. Their objection was sustained; that ruling is adhered to herein.

[1] See for example *Neal D. Scott Commodities*, 238 NLRB 32 (1978).

III. THE UNFAIR LABOR PRACTICES

A. *Background*

Respondents and the Employer have had a collective-bargaining relationship that goes back to the turn of the century. The most recent collective-bargaining agreements covered the periods of 1975 through 1976 and 1980, through 1982. From the beginning of 1977 until January 14, 1980, there was no agreement; during that period the parties were engaged in lengthy and difficult negotiations, largely over issues relating to the extent of the Union's jurisdiction over the Employer's employees. Of particular concern in these negotiations was the introduction of computerized equipment in the composing room, the employees of which, generally speaking, constituted the appropriate bargaining unit.

At all relevant times, the collective-bargaining agreements contained no provisions for union security. Union membership was not a prerequisite for employment.

The bylaws of the International, in effect at all relevant times herein, to which all of its members are bound, provide that union members may honorably withdraw from union membership by submitting a written application, *if* they are in good standing with the Union at the time of their application and have ceased to perform work within the jurisdiction of the Union. Honorable withdrawal carries with it the right to rejoin the Union on reentry into work within the Union's jurisdiction and payment of a nominal charge.

At all times relevant herein, the International's bylaw, article XIV, section 6, has provided for resignation, as follows:

> No member may resign except upon written application, stating the reasons therefor, addressed to the local union of which he or she is a member, and *with the consent of the local union*. Any action of the local union upon such application may be appealed to the Executive Council as herein provided. [Emphasis added.]

B. *The Facts*

Ronald King was employed in the Employer's composing room from about 1954 until the end of March 1977. During all of that time he had voluntarily maintained his union membership. At the end of March 1977, King was promoted to supervisor of the Employer's stockroom and in-house printing department, a position which he believed, contrary to the contentions of the Union, to be outside the Union's jurisdiction.[2]

[2] The General Counsel contended, and I find, that in this position King was a supervisor within the meaning of Sec. 2(13) of the Act. Three employees worked under him. He had hired two of them and had exercised

Continued

On his promotion, King approached the Local's chapel chairman (the printing industry's equivalent of a shop steward), William Stanley, and asked for an application for honorable withdrawal. He told Stanley that he "wanted out," that he was "going downstairs for a new job, and . . . wanted out of the Union." Stanley gave King the application for withdrawal but told him that it would be a waste of time to submit it because Stanley would speak against approval when it came up at the union meeting.

King submitted his written request for withdrawal; the Local refused to grant it on the ground that King was still working in an area over which the Union claimed jurisdiction. King stopped paying dues. Beyond his request for withdrawal and the cessation of his dues payments he took no further action, at that time, to perfect resignation.

In June 1977, James McNulty, who had been a member of the Local since 1959, was given a new job description as the Employer's data processing manager.[3] Upon his realization that he would no longer be performing any work under the Union's jurisdiction, McNulty determined to leave the Union. As Stanley recalled it, McNulty told him that he was no longer part of the bargaining unit, felt that he would be better advised to withdraw from the Union, and would like to get out on a withdrawal. Though Stanley told McNulty that he was welcome to remain in the Union, McNulty submitted an application for withdrawal and attended an executive board meeting where he repeated his request for withdrawal and described the work he was doing. He subsequently received a letter from the Union stating that his application for withdrawal had been denied. According to Stanley, the denial was based on the Union's belief that McNulty was still working at the trade and within the Union's jurisdiction. On learning of the rejection of his request, McNulty told Stanley that since the Union would not grant him a honorable withdrawal he would leave the Union by way of ceasing to pay his dues. Stanley asked him if he wanted to do it that way, McNulty replied affirmatively, and Stanley told McNulty that he was sorry to hear of it. Stanley did not tell McNulty that there was any other procedure for resignation.[4] McNulty thereupon ceased his dues payments.

John Vincenti was employed by Register Publishing since 1962 and had been a union member since 1965. Sometime in 1977 Vincenti was promoted to the position of manager of technical services. In that position he was responsible for the maintenance of the telephone system within the building and other equipment. Three employees worked under him. The General Counsel alleges and I find that Vincenti was a statutory supervisor.[5] The employees who reported to Vincenti were not members of the Union.

In June 1977, when he was still current in his dues status, Vincenti submitted a request to withdraw from the Union. About the same time he ceased to pay dues. Vincenti's request was denied on the basis of the Union's contention that he was still working within its jurisdiction. Vincenti was informed of that decision only by word of mouth from a fellow supervisor, McNulty. No union officer gave him notice of the decision and none informed him of the Union's procedures for resignation.[6]

About November 1977, Vincenti found an informal notice on his desk, signed by Stanley, which stated that he had been suspended for nonpayment of dues. About the same time, the Local posted a printed notice on the bulletin board which summarized the Local's income and expenses, and reported on the status of its membership. Included in the latter description were the names of three members who had been suspended, including both McNulty and Vincenti. The notice did not explain why they had been suspended.

Clifford Scherb is an employee of Register Publishing. Prior to May 15, 1978, he had worked in the Employer's composing room and was a member of the Local and the International. On May 15, 1978, Scherb transferred into the Employer's corporate computer center as a computer operator. That same day he handed Stanley the following letter:

> This is to give you notice that effective this date I am resigning my situation in the Register chapel.
>
> I have accepted employment in the corporate computer center of the Register beginning today.

---

the authority to assign discipline to these employees. Additionally, he had the responsibility to initially hear and attempt to resolve grievances arising among his employees.

[3] The General Counsel alleges, and I find, that McNulty was a statutory supervisor. The record reveals that 9 or 10 employees report to him, he interviews these employees and recommends them for hire and for promotion, he evaluates their work and performs salary reviews in regard to them, and he assigns them work and approves such shift assignments as maybe made by the assistant managers under him. He is the second step after the assistant data processing managers in grievance resolution for employees in his department. None of the employees working under him are within the Union's collective-bargaining unit.

[4] Stanley did not deny McNulty's specific testimony, which I credit.

[5] The record reflects that Vincenti had made effective recommendations to hire employees and had the authority to discipline or discharge them. He assigned overtime, arranged vacations, and was delegated the authority, though he had never exercised it, to make the initial attempts to adjust grievances arising among his employees before bringing such grievances to higher authority.

[6] Vincenti testified to a course of action, beginning in April or May 1977, wherein he allegedly told Stanley that he wanted to leave the Union and preferred to do so on an honorary withdrawal. He claimed that Stanley told him that withdrawals were not being approved because the Union was planning on organizing the entire building and further told him that he could get out of the Union merely by ceasing to pay dues. Thereafter, he testified, following several weeks wherein an executive board meeting, which would have been held to consider his withdrawal application, was repeatedly postponed, Vincenti told Stanley to forget the withdrawal, saying that he was quitting. Stanley denied that Vincenti said anything to him about resignation. William Carey, the Local Union president, credibly testified that no executive committee meetings were postponed or canceled. Moreover, Vincenti had given an affidavit to an agent of the National Labor Relations Board on January 4, 1979. That affidavit contained no references to conversations with Stanley prior to June 1977; neither did it contain any reference to the alleged statement by Stanley to the effect that Vincenti could resign by ceasing to pay his dues. The omission of such significant statements from the pretrial affidavit cannot be ignored. They place into serious question the accuracy of the oral testimony. Moreover, I deem it improbable, considering the Union's course of conduct, its constitution and bylaws, and Stanley's statement to McNulty, that Stanley would have told a member that he could resign by ceasing to pay dues. Accordingly, I do not credit Vincenti's description of his conversations with Stanley regarding withdrawal and/or resignation.

Scherb told Stanley that he would be working in the computer center and would prefer to withdraw, rather than resign, from the Union. Stanley told him, "[N]o way . . . he was going to try to have me expelled from the Union." At the time he submitted his resignation, Scherb was current in his dues.[7]

By letters dated December 29, 1978, Vincenti, King, Scherb, and McNulty were each advised as follows:

> This letter is official notification of an action taken by the membership of the New Haven Typographical Union No. 47 at their last meeting.
>
> The officers of New Haven Typographical Union No. 47 have been instructed to prefer charges against you.
>
> The charges are: Conduct unbecoming a union member.
>
> Specifically, you are charged with failure to remain a member in good standing, while performing work, over which the Union has jurisdiction, and in so doing attepting to undermine Union's jurisdiction.

I.T.U. bylaws article VII, section 11, states in part:

> All composing and mailing room work or any machinery or process appertaining to printing and mailing and the preparations therefor belong to and is under the jurisdiction of the I.T.U.

Each of these individuals was advised of the right to file a written answer and to appear and be heard at the Union's meeting to be held on January 7, 1979.

On receipt of these letters, Vincenti, McNulty, and King each replied to the Union, in writing, claiming that they had severed their membership obligations. Their continued efforts to assert the status of nonmembers were ignored or rejected. Vincenti, for example, wrote the Local on January 5, 1979, claiming that he had severed his membership in July 1977. He repeated his request for resignation on March 20, 1979, in writing, and again on April 25, 1979. On May 3, 1979, he received a letter from Carey stating that his request for resignation was rejected because he was no longer a member in good standing, his dues were in arrears since October 1977, and he was still performing work within the jurisdiction of the Local Union. A subsequent letter, dated May 14, 1979, struck the latter reason from those asserted for rejecting his resignation.

IV. ANALYSIS AND CONCLUSIONS

A. *The Union's Withdrawal Bylaw*

The General Counsel and the Employer contended that Respondent International's bylaw article XIV, section 6, in its "Book of Laws," is an invalid restriction on the right of union members to resign their membership because it gives the Local unrestricted authority to withhold consent and that by the continued maintenance of this bylaw Respondent International has violated Section 8(b)(1)(A) of the Act. I agree. The Board has repeatedly held this bylaw "invalid on its face in that it conditions a member's withdrawal on the consent of the local union, without setting an objective standard for resignation." *Hendricks-Miller Typographic Co.*, 240 NLRB 1082 (1979). See also Typographic Union Local 650 (Copley Press), 221 NLRB 1048, 1051 (1975), wherein the Board stated in regard to this bylaw:

> It is vague, setting no standards for the evaluation of resignation requests submitted pursuant to its terms and gives local unions power to withhold consent in an arbitrary and capricious manner."

A similar result was reached in *Typographical Union 101 (Photo-Typography)*, 243 NLRB 675 (1979). See also *Carpenters (Campbell Industries)*, 243 NLRB 147 (1979). Respondent International contended that, inasmuch as the International was not a party to any of the foregoing cases, the Board's holdings do "not effectively declare that ITU's bylaw to be unlawful." However, the fact that the International was not party to those proceedings does not obscure that validity of the Board's rationale.

Respondent further contended that the bylaw was capable of a lawful construction and asserted that there were standards for the granting of consent, i.e., that the applicant be a member in good standing and be working in the trade at the time of the request. Those standards, if in fact they existed at all, and assuming they would validate the bylaw, were nowhere stated to the membership; it is the absence of stated standards which restrains members in the exercise of their statutory rights. If, for example, members are led by the language of the bylaw to believe that the Local Union has unlimited authority to reject their resignations, the range within which they might exercise protected statutory rights could be severely circumscribed. Accordingly, I find that this bylaw is an invalid restriction on the right of members to resign their membership and that its continued maintenance by the International Union violates Section 8(b)(1)(A) of the Act.[8]

B. *The Resignations*

Where, as here, a union's restriction on resignation is invalid on its face, it presents no bar to resignation. Under such circumstances, a member may resign by merely notifying the union of his intention to do so. *Campbell Industries*, supra. As the Board has stated in a comparable case:

> An employee may communicate his resignation from membership in any feasible way and no particular form or method is required so long as he clearly indicates that he no longer wishes to remain a member.

[7] Stanley's testimony does not substantially contradict that of Scherb. His testimony that Scherb "last paid dues the week of May 6, 1978," unsupported by any documentary evidence, does not establish that Scherb was in arrears in his dues payments when he submitted his resignation.

[8] See *Service Employees Local 680 (Leland Stanford Junior University)*, 232 NLRB 326 (1977), wherein a union was found to have violated Sec. 8(b)(1)(A) by informing employees that they were not permitted to resign their membership in the union.

Distillery Workers Local 80 (Capitol-Husting Co.), 235 NLRB 1264, 1265 (1978). In that case, the employee who demanded a withdrawal card stated, "I no longer wish to belong to this Union," and threatened to file a charge with the NLRB if he did not receive his withdrawal card. His actions were deemed an effective and valid resignation.

Based on the foregoing discussion, I find that each of the individuals herein effectively resigned from the Union. Thus King, like the employee in *Capitol-Husting*, told the chapel chairman that he wanted out of the Union. McNulty told the chapel chairman that if the Union would not grant him an honorable withdrawal he would terminate his membership by refusing to pay his dues. Vincenti submitted a withdrawal request and ceased to pay his dues and Scherb expressly resigned by letter. The actions of these individuals, indicating that they wished to leave the Union and ceasing to pay dues thereafter, unequivocably expressed their intention to terminate whatever relationship that existed between them and the Union. In light of the invalid restriction on resignation, their actions were immediate.

C. *Refusal to Accept Resignations*

The General Counsel and the Employer contended that by refusing to accept the resignations of the four named individuals the Local has violated Section 8(b)(1)(A) and (B) of the Act. Inasmuch as Vincenti, McNulty, and King are statutory supervisors, and as there was no evidence that the refusal to accept the resignations was communicated to any employees, I must reject the 8(b)(1)(A) contention insofar as it applies to them. See *Typographical Union Local 650*, supra, and cases cited therein at 1051. Moreover, the actions of Respondent Local, in November 1978, in listing McNulty and Vincenti as suspended members, do not in my opinion constitute the kind of publication to employees which would have a prohibited coercive effect. That publication listed them as suspended but gave no details of their suspension. There was nothing on that notice which would have lead employees to believe that they could not resign from the Union if they so desired.

Clifford Scherb, on the other hand, was an employee at the time of his effective resignation and his resignation was ignored. Thus, the issue was presented: Does the refusal to recognize an employee-member's valid resignation violate Section 8(b)(1)(A)? In both *Capitol-Husting Co.*, supra, and the very recent case of *Machinists Lodge 727 (Lockheed-California Co.)*, 250 NLRB 326 (1980), the Board held that where the bylaws of the unions contained no restrictions on resignation, Section 8(b)(1)(A) was violated by a union's refusal to acknowledge the effectiveness of its members' resignations. However, in its most recent pronouncement, *Graphic Arts Local 32B (George Banta)*, 250 NLRB 850 (1980), the Board, Member Penello dissenting, came to a contrary conclusion. The union bylaws involved in the *Banta* case prohibited resignation unless the resigning member was both in good standing and had left the industry. The administrative law judge and the Board held that such a provision, precluding voluntary resignation while the member was an employee in the industry, was an invalid restriction, thus permitting the member to resign at will. The employees' letters of resignation were therefore deemed effective to achieve their intended purpose. As to the allegation that the refusal to accept he resignations violated Section 8(b)(1)(A), however, the Board stated (250 NLRB 851) as follows:

> We do not agree with the Administrative Law Judge's conclusion, however, that because of these threats [to fine the former members] Respondents violated the Act by refusing to accept the validly proffered written resignations of former members. The proviso to Section 8(b)(1)(A) permits a labor organization "to prescribe its own rules with respect to the acquisition or retention of membership therein"; therefore, Respondents' refusal to accept the effective resignations is not a violation of the Act because it related directly to the retention of membership.

It is the obligation of an administrative law judge "to follow and apply established Board precedents." *Fred Jones Mfg. Co.*, 239 NLRB 54 (1978). The most recent authority, apparently reversing the earlier authorities, sub silentio, requires rejection of the contention that refusal to recogniize otherwise effective resignations violates Section 8(b)(1)(A). Accordingly, I shall recommend that this allegation be dismissed. For the same reason, I shall recommend that the allegation that Respondent Local violated Section 8(b)(1)(B) by refusing to recognize the effective resignations of supervisors be dismissed.

D. *The Threat to Institute Charges*

The General Counsel contends that, by threatening to institute charges before the membership of the Local Union against Scherb, King, Vincenti, and McNulty for failing to remain members in good standing while performing work over which the Union claimed jurisdiction, Respondent Local violated Section 8(b)(1)(A) and (B). I agree. The law is clear that a union violates Section 8(b)(1)(A) when it summons former members to appear before it to answer charges in regard to conduct which occurred subsequent to their effective resignations. See *Banta*, supra. See also *Machinists Lodge 405 (Boeing Co.)*, 185 NLRB 380, 382 (1970), enfd. in relevant part 459 F.2d 1143 (D.C. Cir. 1972), affd. 412 U.S. 84 (1973), where the Board stated:

> [T]he Union's right to discipline employees terminated upon the employees' submission of their letters of resignation. The attempted imposition of discipline for subsequent conduct was beyond the powers of the Union. It was not consented to by the meployees. Nor, in our view, was it protected by the proviso to the Act.

It is clear from the record herein that Vincenti, McNulty, and King were statutory supervisors authorized to adjust such grievance as might arise among the employees working under them. That authority had been exercised in some informal situations. They were, thus, supervisors and representatives of management to whom

the provisions of Section 8(b)(1)(B) were applicable. *Typographical Union 529 (Hour Publishing)*, 241 NLRB 310 (1979); *Plumbers Local 195 (Jefferson Chemical))*, 237 NLRB 1099, 1101 (1978). Noting that it was the Union's clear intention, at the time it instituted the charges against these individuals, to retain or acquire jurisdiction over more of the Employer's employees, I find that by summoning these supervisors to appear before the local Union on the charges as previously described after they had submitted effective resignations the Local has violated Section 8(b)(1)(B) of the Act. Such conduct, particularly when taken in the context of the International's bylaw prohibiting resignation except on the approval of the local Union, clearly is calculated to influence the supervisors' performance of their supervisory duties during the organizational activities and thereafter. *Typographical Union 18 (Northwest Publication)*, 172 NLRB 2173 (1968). See *Bovee Crail Construction Co.*, 224 NLRB 509 (1976), *Typographical Union 16 (Hammond Publishers)*, 216 NLRB 903 (1975), and *Typographical Union 6 (Triangle Publication)*, 216 NLRB 896 (1975).

V. THE REMEDY

It having been found that Respondent International and Respondent Local have engaged in unfair labor practices in violation of Section 8(b)(1)(A) and (B) of the Act, it will be recommended that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

CONCLUSIONS OF LAW

1. By maintaining and publishing article XIV, section 6, of its bylaws prohibiting resignation except on the consent of the Local Union, Respondent International has violated Section 8(b)(1)(A) of the Act.

2. By summoning Clifford Scherb to appear before the Local Union membership on union charges of violating the constitution and bylaws of the International Typographical Union after said employee had effectively resigned from the Union, Respondent Local has restrained and coerced employees in the exercise of rights guaranteed in Section 7 of the Act and has thereby engaged in an unfair labor practice within the meaning of section 8(b)(1)(A) of the Act.

3. By summoning James McNulty, John Vincenti, and Ronald King to appear before the membership of the Local Union on charges of having violated the constitution and bylaws of the International Typographical Union, after said supervisors had effectively resigned from the Union, Respondent Local has restrained and coerced Register Publishing Company, Inc. in the selection of its representatives for purposes of collective bargaining or adjustment of grievances and has thereby engaged in unfair labor practices within the meaning of Section 8(b)(1)(B) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

5. The Respondents have not violated the Act in any other manner alleged in the complaints.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended [9]

ORDER

The Respondent, International Typographical Union, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Instituting, maintaining, publishing, or enforcing any rule which requires, without express standards, the consent of the Local Union for resignation from the Union.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the purposes of the Act.

(a) Rescind article XIV, section 6, of its bylaws, as published in its "Book of Laws," and notify all of its members of the rescission of that bylaw by publication of an appropriate notice to all of its members in the official announcements section of its monthly magazine, Typographical Journal, and in the next edition of the "Book of Laws" to be published by Respondent International.

(b) Post at its business office and meeting halls and at the business office and meeting halls of New Haven Typographical Union No. 47 copies of the attached notice marked "Appendix A."[10] Copies of the notice, on forms provided by the Officer-in-Charge for Subregion 39, after being signed by Respondent International's authorized representative, shall be posted by Respondent International immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent International to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Mail to the Officer-in-Charge for Subregion 39 signed copies of the notice for posting by Register Publishing Company, Inc., if the Employer is willing, in places where notices to employees are customarily posted. Copies of the notice, to be furnished by the Officer-in-Charge, after being signed by the Respondent International's authorized representative, shall be returned forthwith to the Officer-in-Charge.

(d) Notify the Officer-in-Charge for Subregion 39 in writing within 20 days from the date of this Order what steps the Respondent International has taken to comply.

[Recommended Order for Respondent New Haven Typographical Union No. 47, International Typographical Union omitted from publication.]

---

[9] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[10] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."